

H-2A Overview and Compliance Check List

The Application Process

Who may apply:

Any agricultural employer who anticipates a shortage of U.S. workers needed to perform agricultural labor or services of a temporary or seasonal nature.

How to Apply

45 days prior to the anticipated start date of employment submit the following documentation:

- 2 ETA-750's (**insert ETA-750**)
- 2 ETA-790's (**insert ETA-790**)
- 2 ETA-790 attachments (**insert ETA-790 Attachments**)

Mail original package to:

U.S. Department of Labor
Employment and Training Administration
Attn: RENEE VAN
844 N. Rush Street, 12th Floor
Chicago, IL 60611

Mail copy of your submission package to:

Division of Workforce Development
421 E. Dunklin POB 1087
Attn: H-2A Unit
Jefferson City MO 65102

The USDOL will respond to your submission with seven days of receipt. Once your submission is approved, the Division of Workforce Development (DWD) will perform a migrant housing inspection (**insert housing inspection checklist**).

Processing of an H-2A application involves recruitment of U.S. workers (via print ads and radio ads in Texas). DWD and the Texas Workforce Commission will actively recruit in the first two weeks immediately following receipt of H-2A submission. The Missouri Job Order will remain open for 50% of the contract period listed on the ETA-750A.

Once the employer has properly submitted an H-2A application, engaged in independent positive recruitment, and agree to the terms and conditions of the ETA-790 Attachments (worker assurances) the application will be certified 30 days prior to the employer's date of need.

Please call the Division of Workforce Development's Foreign Labor Certification Unit for further assistance: 1-800-877-8698.

H-2A Compliance Review

H-2A Workers can work:

- ✚ Only for you;
- ✚ Only at the location(s) named;
- ✚ Only performing the named crop activity;
- ✚ Only at the stated rate(s) of pay; and
- ✚ Only during the stated time period.

Other applicable laws:

- ✚ You must hire all U.S. job applicants referred to you who are ready, willing and able to perform the job during the first 50% of the contract period.
- ✚ All U.S. workers doing the same jobs as H-2A workers (corresponding employment) are entitled to all the rights and protections of the contract. For instance, you must provide free transportation, from point of recruitment to the worksite and between housing site and fields, and free housing, to both H-2A and U.S. migrant workers.
- ✚ If you terminate a worker or a worker abandons employment, you must immediately contact the local job service so there is an opportunity to investigate the circumstances of the termination/abandonment or to refer qualified U.S. workers to fill job openings.
- ✚ Workers who complete the season or are terminated without sufficient cause must be paid their return transportation and full – $\frac{3}{4}$ guarantee.

Once employment of U.S. Workers in corresponding employment, or employment of H-2A workers commences you must:

- ✚ Provide the work contract or job order (Form ETA-790) to each worker (foreign or U.S. worker in corresponding employment) by the first workday;
- ✚ Keep all required payroll records;
- ✚ Provide required wage statement to worker on or before each payday;
- ✚ Pay all wages due on the disclosed payday;
- ✚ Pay the correct wage rate each payday. That rate is the highest of the AEWR, state or federal minimum wage, prevailing wage, or promised wage, including piece-rates;
- ✚ Guarantee payment for $\frac{3}{4}$ of the works hours in the contract period;
- ✚ Make all legally required payroll deductions and not make deductions prohibited by law or not disclosed in worker contract;
- ✚ Provide housing to all workers under the contract (U.S. workers in corresponding employment and H-2A workers) who cannot reasonably return to their permanent home at night and ensure the housing remains in compliance with applicable safety and health standards;
- ✚ Provide housing free of charge for rent or deposits to all workers;
- ✚ Pay the cost of transportation and subsistence to your farm, from where each U.S. or foreign workers was recruited when the worker completes 50% of the contract. In addition, you must provide daily transportation from the housing to the work site at no cost;

H-2A Compliance Review

- ✚ Ensure that vehicles used to transport U.S. or H-2A workers meet federal, state and local safety requirements;
- ✚ Provide three meals per day at cost or free centralized cooking facilities for the workers;
- ✚ Provide necessary tools, supplies, and equipment at no cost to the workers;
- ✚ Provide worker's compensation insurance (or its equivalent if workers are excluded from state workers compensation) at no cost to the worker;
- ✚ In case of contract impossibility ("Act of God") that requires termination of employment prior to the end of the contract period, provide remaining contract benefits, including payment of $\frac{3}{4}$ guarantee obligations (up to time of the event which terminated the employment) and return transportation/subsistence;
- ✚ Avoid rejecting or terminating U.S. workers other than for lawful job-related reasons;
- ✚ Notify the local job service office of all rejections, terminations, and resignations of U.S. and/or foreign workers;
- ✚ Provide U.S. workers employed in or applying for corresponding employment wages, benefits, and working conditions at least equal to those provided to foreign workers;
- ✚ Avoid discriminating against workers who testify or otherwise exercise their rights;
- ✚ Avoid causing workers to waive their rights;
- ✚ Permit DOL investigations of your businesses;
- ✚ Avoid interfering with DOL officials who investigate your business activities;
- ✚ Avoid providing false information to DOL officials;
- ✚ Make records available to DOL, the worker or the worker's representative;
- ✚ Comply with all federal, state and local employment-related laws and regulations;
- ✚ Comply with the Fair Labor Standards Act; and
- ✚ If you employ U.S. workers you must comply with the Migrant and Seasonal Agricultural Worker Protection Act.

If you answered "Yes" to each of the above, you should be in full compliance. If you answered "No", you may wish to contact the Division of Workforce Development's H-2A unit at 1-800-877-8696.

This document is intended as a general description and does not carry the force of legal opinion.